

## Message Text

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INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-07 FRB-03

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FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 2332

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TAGS: EINV, MY

SUBJ: CONFRONTATION ON INDUSTRIAL COORDINATION ACT REGULATIONS  
DELAYS IMPLEMENTATION

1. SUMMARY: MINISTRY OF TRADE AND INDUSTRY (MTI) RECENTLY HELD MEETING WITH REPRESENTATIVES OF VARIOUS MANUFACTURERS' ASSOCIATIONS TO OBTAIN FINAL APPROVAL OF REGULATIONS IMPLEMENTING INDUSTRIAL COORDINATION ACT (ICA). RESULT EXACTLY CONTRARY TO MTI EXPECTATIONS; ICA IMPLEMENTATION NOW POSTPONED INDEFINITELY. REASON FOR THIS WAS SKILLFUL ATTACK MOUNTED BY PHILIP KHOO, EXECUTIVE SECRETARY OF FEDERATION OF MALAYSIAN MANUFACTURERS. KHOO QUESTIONED LEGAL BASIS OF SEVERAL SECTIONS OF REGULATIONS, THUS FORCING REVIEW BY ATTORNEY GENERAL'S OFFICE. HE ALSO OBTAINED MTI AGREEMENT TO CONSIDER SETTING UP JOINT PRIVATE-PUBLIC SECTOR "SPECIAL ADVISORY BOARD" TO HEAR APPEALS REGARDING LICENSE APPLICATIONS. PRIVATE SECTOR'S STRATEGY NOW IS TO DELAY ICA IMPLEMENTATION UNTIL NEXT SESSION OF PARLIAMENT WHEN THEIR POLITICAL ALLIES WILL ATTEMPT TO REVISE LAW. MTI OFFICIALS AWARE OF THIS STRATEGY AND CONVINCED IT WILL FAIL. THEY ADMIT PRIVATELY, THOUGH, THAT QUICK ICA IMPLEMENTATION NOT LIKELY.  
END SUMMARY.

2. EMBASSY HAS RECEIVED COMPLETE BRIEFING ON MEETING HELD IN EARLY JANUARY BETWEEN OFFICIALS OF MINISTRY OF TRADE AND INDUSTRY  
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(MTI) RESPONSIBLE FOR IMPLEMENTATION OF INDUSTRIAL COORDINATION ACT (ICA) AND REPRESENTATIVES OF CHAMBERS OF COMMERCE AND

FEDERATION OF MALAYSIAN MANUFACTURERS (FMM). MEETING WAS HELD TO ENABLE MTI TO RECEIVE FINAL APPROVAL FOR ICA IMPLEMENTATION REGULATIONS. ACCORDING TO FMM'S ASSISTANT EXECUTIVE SECRETARY YAP WING CHEN (WHO PROVIDED BRIEFING), OUTCOME WAS NOT WHAT MTI EXPECTED. RATHER, CAREFULLY CONCEIVED STRATEGY BY FMM EXECUTIVE SECRETARY PHILIP KHOO SUCCEEDED IN DELAYING IMPLEMENTATION FOR SOME PERIOD OF TIME, HOPEFULLY UNTIL SPRING SESSION OF PARLIAMENT.

3. KHOO, WHO STEPPED DOWN AS MTI'S TRADE DIVISION DIRECTOR LAST SPRING (BEFORE ICA PASSED), DECIDED TO ATTACK REGULATIONS AT WEAKEST POINTS--INADEQUATE STAFF WORK ON IMPLEMENTATION PROBLEMS AND QUESTIONABLE LEGAL BASIS. ACCORDING TO MTI SOURCES, SENIOR MTI OFFICIALS ARE FURIOUS AT KHOO WHO HAS SUCCEEDED IN PAINTING THEM INTO CORNER, AT LEAST TEMPORARILY.

4. KHOO STARTED BY QUESTIONING REQUIREMENT THAT APPLICANTS UNDER ICA MUST PROVIDE COPIES OF ALL OTHER LICENSES ISSUED BY OTHER GOM AGENCIES. HE ARGUED THAT (A) ICA ALREADY SPELLED OUT MANUFACTURING CONDITIONS SO QUESTION OF OTHER LICENSES NOT IMPORTANT; (B) NEW MANUFACTURERS NORMALLY APPLY FOR ALL LICENSES AT SAME TIME--THUS REQUIREMENT TO SEE ALL OTHER LICENSES WILL SLOW DOWN PROCEDURES; AND (C) WORDING OF REGULATION WAS NOT CLEAR IN THAT MANY LICENSES NOT RELEVANT TO MANUFACTURING PROCESS WERE REQUIRED OF BUSINESSES. MTI INDUSTRY DIVISION DIRECTOR ZAINUDDIN BIN HAJI DIN (BY ALL ACCOUNTS THE DRIVING FORCE BEHIND THE ICA) ARGUED THAT MTI NEEDED TO KNOW WHAT CONDITIONS RELATING TO MANUFACTURING HAD BEEN GRANTED BY OTHER GOM AGENCIES BEFORE DECIDING ON WHICH ICA CONDITIONS WERE APPLICABLE. GROUP AGREED THAT ATTORNEY GENERAL'S OFFICE WOULD CLARIFY REGULATIONS.

5. KHOO THEN RAISED QUESTION OF RELATIONSHIP BETWEEN ICA AND PETROLEUM AMENDMENT ACT. OF SPECIFIC INTEREST TO HIM WAS THE COORDINATION BETWEEN PETRONAS (NATIONAL OIL COMPANY) AND MTI IN REGULATING MANUFACTURING IN PETROCHEMICAL FIELD. THIS FORCED RELUCTANT ADMISSION BY MTI REPS THAT THEIR MINISTRY COULD ONLY "COORDINATE WITH PETRONAS" WHICH WOULD HAVE FINAL SAY IN PETROCHEMICAL INDUSTRY.

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6. KHOO THEN POINTED OUT CERTAIN LOOPHOLES IN REGULATION REGARDING CONFIDENTIALITY OF INFORMATION PROVIDED IN LICENSE APPLICATION. MTI REPS AGREED TO REFER QUESTION TO ATTORNEY GENERAL'S OFFICE FOR CLARIFICATION.

7. KHOO THEN QUESTIONED PROVISION IN REGULATIONS ALLOWING FOR APPEAL TO THE PRIME MINISTER (PM) ON ANY NEGATIVE DECISION MADE BY THE MINISTER OF MTI. HIS OBJECTIONS WERE THREEFOLD:  
(A) PROCEDURE WILL NOT BE EFFECTIVE BECAUSE IT HIGHLY UNLIKELY PM WOULD REVERSE CABINET MEMBER'S DECISION; (B) PM'S DECISION

SHOULD NOT BE FINAL AND BINDING; AND (C) NO SPECIFIC PROCEDURES FOR APPEAL TO PM HAVE BEEN ESTABLISHED IN CASE OF REJECTION BY MINISTER OF MTI. IN VIEW OF THIS SITUATION, KHOO SUGGESTED THAT SPECIAL ADVISORY BOARD, CONSISTING OF REPS FROM PUBLIC AND PRIVATE SECTOR, BE SET UP TO "FACILITATE IMPLEMENTATION OF THE ICA". THIS BOARD SHOULD BE EMPOWERED TO ACT AS AN APPEALS PANEL ON ALL QUESTIONS RELATING TO ICA. IN REPLY, ZAINUDDIN STATED THAT EVERY MANUFACTURER HAD RECOURSE TO LEGAL SYSTEM IN CASE OF GRIEVANCES; PROPOSAL OF HAVING PM ACT AS FINAL APPEAL HAD BEEN DESIGNED TO SAVE PRIVATE SECTOR TIME AND MONEY OF RESORTING TO LEGAL ACTION. REGARDING PROPOSED ADVISORY BOARD, KHOO WAS REQUESTED TO PROVIDE WRITTEN JUSTIFICATION FOR SUCH AN ENTITY WITHIN NEAR FUTURE SO THAT MTI COULD CONSIDER IT FURTHER.

8. KHOO AND REPRESENTATIVE OF CHINESE CHAMBER OF COMMERCE ONG KIM SENG BOTH QUESTIONED THE LIMITS FOR EXEMPTION UNDER ICA (M\$100,000 IN SHAREHOLDERS' FUND OR LESS THAN 25 EMPLOYEES). ONG SUGGESTED THAT LIMITS SHOULD BE RAISED TO M\$500,000 AND 40 EMPLOYEES. ZAINUDDIN STATED THAT, BASED ON RECOMMENDATION BY FEDERAL INDUSTRIAL DEVELOPMENT AUTHORITY (FIDA), MIT NOW THINKING IN TERMS OF M\$200,000 AND 25 EMPLOYEES, WHICH WOULD EXEMPT ABOUT 20 PERCENT OF ALL MANUFACTURING FIRMS. IF M\$500,000 LIMIT ACCEPTED, 44 PERCENT WOULD BE EXEMPTED, THUS VITIATING INTENT OF LAW. HE STATED, HOWEVER, THAT MTI PROPOSED TO EXAMINE THIS QUESTION AND REQUESTED ONG TO PROVIDE WRITTEN JUSTIFICATION FOR M\$500,000 LIMIT.

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9. KHOO THEN POINTED OUT THAT ICA HAD RAISED SUBSTANTIAL FEARS IN MINDS OF EXISTING MANUFACTURERS AS TO GOM INTENTIONS. HE STATED THAT VARIOUS VERBAL ASSURANCES BY MINISTER OF MTI TO EFFECT THAT CONDITIONS WOULD BE APPLIED IN FAIR MANNER SHOULD BE SPELLED OUT IN REGULATIONS. OTHERWISE HE CONTINUED, THESE REMAINED MERELY ASSURANCES AND, AS SUCH, HAD NO LEGAL STANDING AND THAT PRIVATE SECTOR, THEREFORE, NOT CONVINCED OF SINCERITY OF SUCH ASSURANCES. (COMMENT: FOR TACTICAL REASONS, KHOO SOMEWHAT OVER-STATED PRESENT MOOD OF CHINESE BUSINESS COMMUNITY.) ZAINUDDIN, STUNG BY THIS ATTACK, STATED THAT ASSURANCES WERE GIVEN IN GOOD FAITH AND SHOULD BE SO ACCEPTED. HE THEN LAUNCHED INTO DEFENSE OF GOM POLICIES BASED ON FAMILIAR "JUDGE US BY OUR PAST ACTIONS" APPROACH. HE CONCLUDED BY SAYING THAT BEST ASSURANCE MTI COULD GIVE PRIVATE SECTOR WAS IN FAIRLY ADMINISTERING ICA.

10. MEETING ADJOURNED WITHOUT MTI HAVING ACCOMPLISHED GOAL OF OBTAINING PRIVATE SECTOR APPROVAL OF REGULATIONS, THUS EFFECTIVELY PRECLUDING ICA IMPLEMENTATION FOR SOME PERIOD OF TIME. ACCORDING TO YAP WING CHEN, REAL STRATEGY IS TO DELAY IMPLEMENTATION AT LEAST UNTIL SPRING SESSION OF PARLIAMENT CONVENES. HE STATED THAT FMM AND CHINESE CHAMBER WERE MOUNTING CAMPAIGN WITH VARIOUS MEMBERS OF PARLIAMENT, ESPECIALLY THOSE IN MALAYSIAN CHINESE ASSOCIATION (MCA), TO SEE IF IT POSSIBLE TO EITHER AMEND OR REVOKE ACT. YAP NOT PARTICULARLY OPTIMISTIC THAT THIS COULD BE ACCOMPLISHED BUT FELT IT WORTH EFFORT AND THAT ANY DELAY WAS LIMITED OFFICIAL USE

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TO ADVANTAGE OF PRIVATE SECTOR.

11. IN SEPARATE CONVERSATION, GEH SIM HONG, FIDA DEPUTY DIRECTOR (WHO ALSO PRESENT AT MEETING), CONFIRMED DETAILS REPORTED ABOVE. HE SAID MTI AWARE OF FMM'S STRATEGY, BUT FELT IT WOULD NOT SUCCEED. HE ADMITTED, HOWEVER, THAT MTI'S HOPES FOR QUICK ICA IMPLEMENTATION HAVE BEEN DESTROYED AND THAT LONG STRUGGLE WITH PRIVATE SECTOR OVER ICA REGULATIONS NOW IN STORE. GEH SAID THAT MTI HIERARCHY DISMAYED BY KHOO'S SKILLFUL ATTACK ON THEIR POSITION AND FELT THAT BECAUSE OF HIS SPECIAL KNOWLEDGE OF WAY MTI BUREAUCRACY OPERATES, KHOO WAS MOST EFFECTIVE ICA OPPONENT AROUND.

12. COMMENT: FMM HAS APPARENTLY SUCCEEDED IN THROWING MTI INTO TEMPORARY DISARRAY ON QUESTION OF ICA REGULATIONS. HOWEVER, IT DOES NOT SEEM REALISTIC TO EXPECT THAT ACT WOULD BE REVOKED BY PARLIAMENT SINCE GOM PERCEIVES THAT BASIC THRUST OF LAW PROVIDES NEEDED TOOL FOR GOVERNMENT TO EFFECTIVELY REGULATE DEVELOPMENT OF MANUFACTURING SECTOR. FURTHERMORE, ODDS ARE AGAINST SIGNIFICANT CHANGE IN ICA RESULTING FROM MCA EFFORTS IN NEXT SESSION OF PARLIAMENT. AT SAME TIME, DELAY AND CONTINUING HASSLE COULD BE USEFUL IF IT RESULTS (AS IS LIKELY) IN MATTER BEING BROUGHT TO

ATTENTION OF PM. THERE ARE INCREASING INDICATIONS (SEPTEL) THAT  
PM HAS DEEPER APPRECIATION OF PRIVATE SECTOR NEEDS AND CONCERNS  
THAN PREVIOUS PM, BUT THIS REMAINS TO BE DEMONSTRATED.

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